THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.6524 of 2005

Date 06-12-2007

Between:
Sri Bhavani Distilleries (India) Limited, Tekriyal village, Kamareddy Mandal, Nizamabad District.

..... PETITIONER

AND

The Assistant Provident Fund Commissioner Employees Provident Fund Organisation, Sub-Regional Office, Nyalkal Road, Nizamabad District & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.6524 of 2007

ORDER:

Heard both the counsel.

2. Learned counsel for the petitioner would submit that though ample material had been placed while praying for review of the impugned order, the same had not been considered in proper perspective and hence, the impugned order is liable to be quashed and the matter be remitted to the first respondent for consideration.

3. Learned counsel for the respondents, however, had taken this Court through the impugned order and would submit that as against the impugned order, the remedy of appeal is available and inasmuch as there is no legal infirmity in the order impugned, the writ petition is liable to dismissed.

4. The relevant portion of the impugned order reads as hereunder:

> (i) The application in form-9 dated 30-11-2004 for review of 7-A order dated 20-10-2003 has been received by the office only on 30-11-2004 i.e. after the expiry of the stipulated period which he should file within 45 days from the date for making such order as required under para 79A of the scheme.
>
> (ii) No new and important matter of evidence or any other sufficient reason with documentary proof has been produced by the management in support of seeking review of the order passed under Section 7-A of the Act dated 20-10-2003.
>
> Therefore the request of the employer is rejected herewith.
>
> Further employer is hereby advised to comply with the provisions of EPF & MP Act, 1952 and remit the dues forthwith".

5. This Writ Petition is filed seeking to quash the impugned order

of the first respondent dated 20-12-2004.

6. The petitioner, being a Company, registered under the Companies Act, 1956, manufacturing and selling Rectified Spirit in the name and style of M/s. Sri Bhavani Distilleries (India) Limited, situated at Tekriyal village, Kamareddy, Nizamabad District, purchased the said factory in the auction conducted in the month of July, 2000. It is stated that the petitioner-Company was covered by the provisions of Employees' Provident Fund & Miscellaneous Provisions Act, 1952

(for short 'the Act') and was allotted Code No.AP/37905. Petitioner states that due to the dilapidated condition of the Company, it was closed with effect from 23-09-2003 and that it had paid the provident fund contributions from the date of coverage till the date of closure of the industry. It is further stated that the first respondent had passed the impugned order, under Section 7-A of the Act, without taking into consideration the contributions made by the petitioner-Company and without giving any details simply mentioned that it is liable to pay an amount of Rs.1,04,083/- towards P.F. contributions. It is also stated that since the P.F. contributions from the date of coverage till date were paid by the petitioner-Company and there were no dues, it made an application under Section 7-B of the Act seeking review of the order of the first respondent dated 20-10-2003. It is stated that the first respondent, vide impugned proceedings dated

20-12-2004, had rejected the review petition stating that since the application was filed after expiry of 45 days from the date of passing the order under Section 7-A of the Act and that no documentary proof was produced in support of seeking review of the order dated 20-10-2003. Thereafter, the second respondent had issued the show cause notice dated

15-03-2005 as to why he should not be committed to civil prison in

execution of the said order. In the circumstances, the writ petitioner had approached this Court praying for appropriate reliefs.

7. In the counter affidavit filed on behalf of the respondents, it is stated that the petitioner-Company was covered under the provisions of the Act with effect from

01-02-2001 and was allotted code No.A.P/37905. As the petitioner-Company committed default in payment of contributions from February, 2001 to July, 2003, an enquiry squad submitted his report recommending to conduct enquiry under Section 7-A of the Act and on the basis of the enquiry report, the petitioner-Company was called upon to attend the enquiry and that the petitioner had appeared before the authority and placed the relevant material. Thereafter, the first respondent passed an order on 20-10-2003 assessing an amount of Rs.3,21,886/- towards arrears for the period February, 2001 to July, 2003 and communicated the same to the petitioner-Company. Respondents deny the contention of the petitioner-Company that it had remitted dues from the date of coverage till the date of closure and since the petitioner had not submitted any documentary proof regarding closure of the Company from the concerned authorities, an order was passed, under Section 7-A of the Act, on 20-10-2003 assessing an amount of Rs.3,21,886/- towards the arrears of P.F.Contributions for the period February, 2001 to July, 2003. Against the said order, the petitioner-Company made application under Section 7-B of the Act seeking to review the order dated 20-10-2003, which was rejected on

20-12-2004 stating that it was filed after expiry of the stipulated period of 45 days from the date of passing the order under Section 7-A of the Act. It is also stated that the writ petitioner had committed default even after issuing the prohibitory orders dated 04-12-2003, 22-01-2004 and

11-08-2004, and therefore, notice of demand and warrant of attachment of movable property had been issued to recover the dues to a tune of Rs.1,12,239/- after adjusting the amount already paid by the petitioner-Company. It is stated that a statutory appeal lies against the orders passed under Section 7-A of the Act and that the petitioner without exhausting the said remedy of appeal, had approached this Court.

8. These are the respective stands taken by the parties. The main grievance of the petitioner is that the material placed by the petitioner had not been considered by the first respondent in proper perspective. On a careful reading of the order impugned, this Court is of the considered opinion that inasmuch as the reasons had been recorded, this Court cannot find fault with the impugned order and is not inclined to interfere with the said order.

9. The Writ Petition is accordingly dismissed. No order as to costs. However, liberty is given to the petitioner to pursue the alternative remedy available to him in law.

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06-12-2007

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